4. A-file document request list (Appendix 4)
5. Templates (Appendix 5)
6. Appeal Checklist (Appendix 6)

III. Validity of an Approved Waiver

A. Valid Only for the Crimes, Events, or Incidents Specified in the Waiver Applications

Under 8 CFR 212.7(a)(4), an approved waiver is only valid for those crimes, events, or incidents specified in the application for a waiver. Except as specified in Sections III(B), (C) or (D) of these procedures, or for individuals granted Temporary Protected Status (TPS), once granted, the waiver is valid indefinitely, even if the recipient of the waiver later abandons or otherwise loses lawful permanent resident status.

If an individual had been in the United States on TPS status and the status was granted after a waiver of inadmissibility was approved, the applicant is required to obtain a new waiver when applying for other benefits, if still inadmissible. The waiver granted for TPS purposes is valid only for TPS purposes.

B. Validity of a Waiver Granted to an Alien who Obtains Lawful Permanent Residence on a Conditional Basis under INA 216

Any waiver that is granted to an alien who obtains lawful permanent residence on a conditional basis under INA 216 shall automatically terminate concurrently with the termination of such residence pursuant to INA 216. Separate notification of the termination of the waiver is not required when an alien is notified of the termination of residence under INA 216, and no appeal may be taken from the decision to terminate the waiver on this basis. However, if the individual is found not to be deportable in a removal proceeding based on the termination, the waiver shall again become effective. 8 CFR 212.7(a)(4).

C. Conditional Grant of a Waiver to K-1 and K-2 Visa Applicants

Although the K classification is a nonimmigrant classification and is generally eligible for an INA 212(d)(3)(A) nonimmigrant waiver, DHS regulations permit the K visa applicant to file a Form I-601 to obtain an *immigrant* waiver of admissibility. 8 CFR 212.7(a). USCIS has jurisdiction of section 212(d)(3)(A) requests in the case of K nonimmigrants. A separate 212(d)(3)(A) application and fee is not required when a section 212(d)(3)(A) request originates with a Department of State officer. 8 CFR 212.4(a)(1). Generally, a consular officer may forward to USCIS both a Form I-601 packet (for the immigrant waiver) and a Form OF-221, *Two-Way Visa Action and Response*, recommending a grant of a nonimmigrant waiver. (9 FAM 41.81 N9.3). If the consular officer submits an OF-221 along with the Form I-601 and USCIS staff approve the Form I-601, USCIS staff should also approve the OF-221. If the Form I-601 is denied, staff should also deny the OF-221. Because a K-1 (and K-2) applicant does not yet have the requisite relationship to a United States citizen, to qualify for an immigrant waiver, the approval of the Form I-601 is granted on a conditional basis. That is, USCIS makes a final determination on the eligibility for an immigrant waiver from inadmissibility once the applicant (or the applicant's spouse) has celebrated a bona fide marriage to the U.S. citizen who had filed

the K visa petition. If the applicant establishes eligibility for the waiver when seeking a K-1 or K-2 visa, the adjudicator conditionally approves the application. The condition imposed on the approval is that the applicant (or the applicant's parent) and the U.S. citizen who filed the K visa petition will celebrate a bona fide marriage within the statutory time frame of three (3) months, from the day of the applicant's (or the applicant's parent's) admission into the United States. Despite the conditional approval, USICS may ultimately deny the Form I-601 if the applicant (or the applicant's parent) does not marry the United States citizen who filed the K visa petition or if the applicant (or the applicant's parent) does not seek and receive permanent residence on the basis of that marriage.

D. Conditional Grant of Approval of Form I-601 under 8 CFR 204.313(g)(1)(ii) for Intercountry Adoption of a Convention Adoptee

The grant of a waiver of inadmissibility in conjunction with the provisional approval of a Form I-800 is conditioned upon the issuance of an immigrant or nonimmigrant visa for the child's admission to the United States based on the final approval of the same Form I-800. If the Form I-800 is finally denied or the immigrant or nonimmigrant visa application is denied, the waiver is void.

E. Reconsideration of the Grant of Form I-601

According to 8 CFR 212.7(a)(4), nothing in 8 CFR 212.7 shall preclude a Director from reconsidering a decision to approve Form I-601, if the decision to grant the waiver is determined to have been made in error. Upon its own motion to reconsider, USCIS would issue to the applicant a Notice of Intent to Revoke with the possibility to respond to the adverse information.

IV. Filing with the Department of State (DOS)

An applicant for an immigrant visa or "K" nonimmigrant (fiancé(e) or spouse) or V visa who is inadmissible and seeks a waiver of inadmissibility files the application for waiver, Form I-601, with the U.S. Consulate's Immigrant Visa Section (IV) that is considering the visa application. 8 CFR 212.7(a)(1)(i). When a consular officer determines that the alien is admissible except for the grounds for which a waiver may be sought, the consular officer informs the applicant of the requirement to file a Form I-601. The alien must file the application at the consular post, which receipts the fee and then forwards the application to USCIS for a decision. Consular posts should send to overseas USCIS offices only those waiver applications where there are no other grounds of inadmissibility that cannot be overcome. The FAM makes clear that the determination of whether or not to grant a request for an immigrant waiver lies solely within the jurisdiction of DHS. Even if the consular officer does not believe an applicant is eligible for a waiver, DOS must submit the waiver request to the DHS at the applicant's insistence to allow DHS to determine waiver eligibility. See e.g., 9 FAM 40.21(A) PN2.1 *Making Waiver Requests Directly to Department of Homeland Security (DHS*).

If the application is filed to waive a communicable disease of public health significance, and the applicant is incompetent to file, a qualified family member may file the waiver application on the applicant's behalf. 8 CFR 217.7(b)(1). For any other use of Form I-601, 8 CFR 103.2(a)(2) permits a duly appointed guardian to sign the Form I-601 on behalf of an incompetent person.